In the Supreme Court
OF THE
United States

OCTOBER TERM 1920

No. 63

NORTH PACIFIC STEAMSHIP COMPANY,
Appellant,

vs.

WILLIAM T. SCOTT,
Appellee.

BRIEF FOR APPELLANT.

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[redacted]

Table of Cases Cited.

Index of Brief.

In the Supreme Court
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United States

OCTOBER TERM 1920

No. 355

NORTH PACIFIC STEAMSHIP COMPANY,
Appellant,

vs.

WILLIAM T. SOLEY,
Appellee.

BRIEF FOR APPELLANT.

I.

STATEMENT OF THE CASE.

This is a direct appeal from a decree of the District Court of the United States for the Northern District of California dismissing appellant's bill of complaint for want of jurisdiction of the cause of action therein set forth. The court concluded, after a trial on the merits, that the value of the matter in dispute did not exceed, exclusive of

interest and costs, the sum of $3000.00. The correctness of this ruling is the only question presented to this court for its determination (Certificate Setting Forth Jurisdictional Question; Tr. of Record, p. 21).

The facts are as follows:

Appellant, a steamship concern, was operating the Steamship "Breakwater" in interstate ocean transportation of freight and passengers between ports in the States of Washington, Oregon and California during the month of June, 1916. On one of these trips she entered the Port of San Diego, California, June 12, 1916. The appellee, Soley, was employed as a longshoreman on board the vessel in loading and discharging cargo. While engaged in replacing hatch coverings, at the close of the day's work, he met with a severe injury.

In December, 1916, appellee filed an application with the Industrial Accident Commission of the State of California pursuant to the provisions of the Workmen's Compensation Insurance and Safety Act (Chapter 176 of the Laws of 1913, of the State of California as amended by Chapter 531, 607 and 662 of the Laws of 1915), for the purpose of obtaining compensation for the injuries suffered and for the medical and surgical expenses incurred by him as a result thereof. The proceedings before the Commission resulted in the rendition and entry on April 18, 1917, of certain purported "Findings and Award". The findings showed upon their face that the accident to appellee occurred while

he was engaged in a maritime contract of employment and that therefore the Commission had no jurisdiction over the subject matter of the application for any purpose. Nevertheless an award was entered in his favor by the terms of which appellant was ordered to pay to him the following sums:

1. Cash in hand on account of disability indemnity accrued up to the date of the award	$281.25
2. Cash in hand for medical and hospital services and attention	515.35
Total cash in hand	$796.60
3. The sum of $11.25 weekly in advance on account of disability indemnity "beginning with the 19th day of December, 1916, until the termination of such disability or the further order of the Commission, the total period of payment, however, not to exceed 240 weeks"; total future payments	$2700.00
Total award	$3496.60*

On June 4, 1917, appellee, pursuant to the provisions of the Compensation Act, filed in the office of the County Clerk of the City and County of San Francisco a copy of the findings and award, and pursuant to the provisions of the Act, a judgment of said Superior Court in his favor based thereon

*This amount was inadvertently computed at $3015.35 and is so stated in the bill of complaint.

and in accordance with its terms was made, signed and recorded on the same day.

Appellant not having paid any portion of the sums awarded him, appellee on November 12, 1917, caused a writ of execution to be issued against it to satisfy the judgment of the Superior Court to the extent of the amount which had then accrued under the findings and award. This amount did not at that time exceed the sum of $1500.00. The writ was returned wholly unsatisfied on November 28, 1917.

On December 18, 1917, appellant filed its bill of complaint in this action for the purposes inter alia of enjoining appellee from endeavoring in any manner whatsoever to enforce the award of the Commission or the judgment of the Superior Court, and of obtaining an adjudication declaring them null, void and of no effect. On *January 2, 1919,* appellee answered.

On *August 20, 1919,* appellee filed with the Commission an application for an order fixing the duration and extent of his disability, and for the termination of appellant's liability under the award as of *December 10, 1917* (Tr. of Record p. 18, f. 31). The application was granted by the Commission, and on *August 25, 1919,* its order terminating disability indemnity was entered (Tr. of Record p. 18). In this order, the Commission recited its findings that the disability suffered by the appellee had terminated December 10, 1917, and that the total liability of this appellant was therefore limited to the sum of $1307.75. It will be noted that this last mentioned

order was entered by the Commission *more than twenty months after the institution of this action* and indeed *on the very day before trial.*

Upon trial the appellee was permitted, over objections made by the appellant, and exceptions taken to the rulings of the court thereon, to present evidence to the effect that he had fully recovered from his injury on December 10, 1917, and to introduce in evidence the above mentioned purported order of the Commission terminating the liability of appellant.

The cause having been submitted, the court reached the conclusion that the value of the matter in dispute did not exceed, exclusive of interest and costs, the sum of $3,000.00, and upon this ground entered its decree dismissing the bill of complaint.

The court reached its conclusion as appears from its oral opinion (Tr. of Record p. 19) upon the theory that the act of the Commission in terminating the disability indemnity liability of appellant (by the order entered some twenty months after the institution of the action) as of December 10, 1917, whereby it restricted the total amount which appellant could at any time after the entry of this last mentioned order be compelled to pay, to $1370.00, disclosed a case in which the jurisdictional amount was not involved. It also proceeded upon the theory that, whereas the order for weekly indemnity payments was by its terms made subject to the continued disability of appellee, "or the further order"

of the Commission, this appellant was bound, prior to the institution of the action, to have applied to the Commission for an order determining whether the condition of appellee had so changed as to entitle it to *an order of that tribunal* fixing its maximum liability in a sum less than $3000.

The contention of the appellant was and is:

1. That jurisdiction of the cause is to be determined in the light and legal effect of the circumstances which existed at the moment of its institution and that no subsequent alteration in these circumstances, whether by order of the Commission or otherwise, could in any manner affect the jurisdiction of the court. In other words, if the circumstances existing when the bill of complaint was filed were such as to clothe the court with jurisdiction, no later development, whatever its character, could bring about an ouster of that jurisdiction.

2. That whereas the Commission admittedly acted in excess of its powers in assuming jurisdiction of the application made to it by appellee and in making and entering its findings and award, this appellant was under no obligation, either to appear before the Commission in the original proceeding, or to apply to it thereafter for the purpose of terminating its purported liability under an order void on its face.

3. That by virtue of the filing by appellee of the findings and award in the Superior Court and of the judgment entered thereon, both the award and the judgment being in full force and effect when the

bill of complaint herein was filed, the value of the matter placed in dispute by appellant in seeking to enjoin the enforcement of the award and judgment, was necessarily the amount which, upon the record, it then stood ordered to pay to him, namely, $3496.60.

4. That inasmuch as the bill of complaint on its face contained averments in conformity with the jurisdictional requirements and no charge was made or showing attempted that they were not made in good faith, the court had jurisdiction.

5. That it is apparent from the record and from the opinion of the court that the ascertainment of the amount involved necessarily depended upon the determination and decision by the court of controverted issues of fact and of law, and that the court, having jurisdiction to determine these controverted issues, also had jurisdiction to entertain the bill for all purposes and to grant the relief sought.

II.

ERRORS ASSIGNED AND RELIED UPON.

1. The court erred in making its order and decree wherein and whereby it ordered, adjudged and decreed that this cause be dismissed for want of jurisdiction thereof.

2. The court erred in giving and making its order dismissing this cause for want of jurisdiction thereof.

3. The court erred in dismissing said action and in holding and deciding that the amount in issue therein did not exceed, exclusive of interest and costs, the sum of $3000.00.

4. The court erred in dismissing this action and in holding and deciding that the amount in issue therein was less, exclusive of interest and costs, than the sum of $3000.00.

5. The court erred in refusing to hold that this complainant was entitled to the relief prayed for in this bill of complaint (Tr. of Record p. 22, fol. 38).

III.

Brief of Argument.

THE CIRCUMSTANCES EXISTING AT TIME OF FILING THE BILL OF COMPLAINT ARE DETERMINATIVE OF JURISDICTION.

The rule that the jurisdiction of Federal courts over causes of action depends upon and is determined by the circumstances which exist at the institution of the action, and that such jurisdiction cannot be ousted nor affected by any subsequent alteration of those circumstances, has been laid down and reiterated by this court on so many occasions and in so many decisions that to enter into a discussion of the point and to cite authorities in support of it would appear to serve no useful purpose. The rule stands absolutely without contradiction.

It is well stated as follows:

> *"The plaintiff's right to sue* is anterior to any defense which the defendant may make, and *must depend upon the situation and condition of things when the action is instituted.* It cannot be made to depend on the defense which defendant may elect to set up."*
>
> *Way, et al. v. Clay, et al.,* 140 Fed. 352.

This being the case, the order of the Commission entered August 25, 1919, terminating the liability of appellant as of December 10, 1917, cannot and does not enter into the question here raised. Either the court had jurisdiction when the bill was filed, and hence of the cause for all purposes, or it did not. The argument herein will therefore be confined to a discussion of the circumstances existing when the action was commenced and of their legal effect.

Appellant's Legal Liability When This Action Was Commenced was $3496.60.

The award of the Commission commanded payment to appellee of $3496.60. The maximum sum which appellant could eventually be called upon to pay under its terms was definitely determined and did not depend upon any affirmative contingency. The obligation of appellant to pay the total sum had at that time been imposed upon it by the Commission as fully and completely as that body could have imposed it in any case. That appellant's lia-

*Italics are ours throughout.

bility might have been reduced by subsequent order of the Commission is utterly immaterial for the reason that no such order had been made, and indeed none was ever made until the day before the trial of this action. The possibility that such an order would ever be made was a contingency negative in its nature, upon the occurrence of which neither this appellant nor the District Court could [redacted] be required to speculate.

Having filed the findings and award in the Superior Court and having obtained a judgment thereon, appellee's *legal right and power* to collect the full sum of $3496.60 by means of a series of levies of execution was complete. As will be shown, he could not be deprived thereof save by a further order of the Commission filed in the Superior Court. The continuance of his right did not depend upon any affirmative contingency. Provided only that the record in the Superior Court remained unaltered, he was at liberty to demand and compel the issuance of writs of execution whenever and as frequently as any sum of money became payable to him pursuant to the terms of the award and the judgment founded thereon. He might, in fact, have taken out a writ of execution every week for the sum of $11.25 until the full amount of $3496.60 should have been paid him. To precisely the same extent appellant stood in danger of being deprived of its property. To safeguard itself against that peril was its right and its purpose in instituting this action.

Appellant's Legal Liability Was Terminable Only by Order of the Commission Filed in the Superior Court.

The award provided inter alia for the payment to appellee of

> "2. The further sum of eleven dollars and twenty-five cents ($11.25) per week, payable in advance, beginning with the 19th day of December, 1916, until the termination of said disability or the further order of this Commission, the total period of payment, however, not to exceed two hundred forty weeks."

It is to be noted that the weekly payments were to continue

> "until the termination of said disability, *or* the further order of this Commission."

This question, therefore, arises: Could the liability of appellant to make payment, in accordance with the terms of the award and judgment, have been legally terminated by the bare fact of appellee's recovery without any official determination thereof, or indeed, in any manner otherwise than by an order of the Commission itself?

The Compensation Act provides as follows,

Sec. 25, subd. (d):

> "The Commission shall have continuing jurisdiction over all its orders, decisions and awards made and entered under the provisions of sections twelve to thirty-five, inclusive, of this act and may at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter or amend any such order, decision or award made by it upon good cause appearing therefor; provided, that

no award of compensation shall be rescinded, altered or amended after two hundred forty-five weeks from the date of the injury. Any order, decision or award rescinding, altering or amending a prior order, decision or award shall have the same effect as is herein provided for original orders, decisions or awards."

The Act further provides,

Sec. 26, subd. (a):

"Any party affected thereby may file a certified copy of the findings and award of the Commission with the clerk of the Superior Court for any county, or city and county, and judgment must be entered by the clerk in conformity therewith immediately upon the filing of such findings and award."

Sec. 26, subd. (d):

"When a judgment is satisfied in fact, otherwise than upon an execution, *the Commission may,* upon motion of either party, or of its own motion, *order the entry of satisfaction of the judgment to be made, and upon filing a certified copy of such order with the said clerk, he shall thereupon enter such satisfaction, and not otherwise."*

The Commission is a body, whose awards and orders are judicial determinations or judgments. It has a continuing jurisdiction over all its proceedings and it alone has the power to alter, amend, rescind or set aside its own orders or decisions rendered within the limits of its jurisdiction. The Act provides a method and *the only method* by which liability to make continued payments to an employee may be *legally* terminated.

The third portion of the Act above quoted conclusively shows that the right of appellee to demand and obtain writs of execution directed against this appellant continued until the record in the Superior Court should disclose that the judgment had been satisfied by executions or until it should contain an order of the Commission for the entry upon that record of its satisfaction in fact.*

It necessarily follows that the mere circumstance that appellee had recovered from his injury would not and could not automatically have deprived him of the *legal power* to require and obtain writs of execution. If his recovery, unascertained and undetermined, officially or otherwise, by the Commission or any other tribunal, ipso facto terminated this appellant's future liability, appellant would have been ipso facto entitled automatically and immediately to a satisfaction of the record with respect thereto. But the clerk is expressly prohibited from entering any satisfaction save upon the express terms stated in the Act and until a satisfaction was so entered this appellant stood menaced and threatened with a deprivation of its property through process of execution.

So long as the record in the Superior Court remained as it stood on the date of the institution of this action, this appellant was bound by it, and the clerk of the court was bound by it. He was obliged

*This record does not show that the purported order of the Commission entered August 25, 1919, terminating appellant's liability, was ever filed in the Superior Court. On the very date of the trial the judgment of the Superior Court stood unaltered.

to act upon it, for he certainly had no power to take cognizance of facts, as having the legal effect of working a satisfaction of the judgment from the date of their existence, which were not judicially determined and not officially or otherwise before him.

If this contention is incorrect, the clerk of every Superior Court in which findings and awards are filed, has the power which the Act expressly says he shall not have, to pass upon a question of fact and to declare a judgment satisfied. It would follow also that the clerk has the power to all intents and purposes to substitute himself in the place and stead of the Commission and to "rescind, alter or amend" an award in spite of the fact that such power is expressly given and reserved exclusively to the Commission itself.

It is, of course, perfectly obvious that it is only the *legal rights of appellee and the corresponding legal liability of appellant,* as they existed at the institution of this action, which are here in controversy. If appellant was at that time threatened and menaced by a judgment under which, as it then existed, it might in the course of time have been deprived of property exceeding $3000.00 in value, the lower court had jurisdiction. Appellee was aware of this, for in the District Court he took the position that his *legal power* to recover weekly indemnity payments and appellant's *legal liability* to make such payments wholly ceased and ended as a matter of law on the date of his recovery, namely, December 10, 1917, eight days prior to the filing of

the bill. But that he had so recovered merely demonstrated *that the award should have been terminated as of that date;* that his legal right to collect accruing payments should have been officially cut off. It does not in the slightest degree show that his *power* to deprive this appellant of its property had actually been legally terminated, for the record of the Commission and that of the Superior Court are conclusive on that point. These records reveal that that power was in existence when this action was begun, and that power constituted in and of itself a threat and menace against the right of appellant to remain secure and undisturbed in its property to the full extent of the award.

Appellee himself, in recognition of the foregoing propositions, in an eleventh-hour attempt to oust the District Court of jurisdiction, on August 20, 1919, filed with the Commission his application for the order terminating appellant's liability which was thereafter made by the Commission on August 25, 1919 (Defendant's Exhibit A, Tr. of Record p. 18).

Appellee's position is based upon a fundamental error. He utterly fails to distinguish between the effect of the existence of facts upon which the Commission might and should, upon application therefor, have made its order terminating liability, and the effect of an order so made and filed in the Superior Court. The latter alone could legally and effectually terminate liability. He fails to distinguish between the basis of such an order and the order itself. Payment of money may satisfy a judgment in

fact, but until payment appears of record a judgment creditor stands in a position where he can, though wrongfully, obtain an execution against the judgment debtor. If he does attempt to use his legal power in such manner, he may be enjoined from proceeding. So here, appellee may have had no just or moral claim to weekly indemnities accruing subsequently to December 10, 1917, but the fact remains that then and at all times thereafter, at least until the Commission's order of August 25, 1919, should have been filed in the Superior Court, he had *the legal power to enforce payment* thereof and *the exercise of that legal power is the thing which appellant in this action seeks to enjoin.*

Appellant Was Not Bound to Seek Relief Before the Commission.

This court has frequently and emphatically declared that awards made under the circumstances existing in this case are absolutely void and that the Commission was wholly without jurisdiction to entertain the application for compensation for any purpose whatever.

The mere reference to these decisions completely refutes the conclusion of the lower court that this appellant was at any time obliged to apply to the Commission for a determination of the ultimate extent of its liability; that tribunal had no jurisdiction for any purpose, either to make the award or to declare the extent of any liability thereunder. Its entire activity in connection with the matter was

illegal, void and of no effect. Nothing that it did or could have done in the premises had any validity whatever. No principle of law or equity demands that a person perform the idle act of applying to a tribunal which has no jurisdiction over the subject matter of controversy and demanding relief from any order which it has made with respect thereto.

Remer v. Mackay, 35 Fed. 86.

The Value of the Matter in Dispute Exceeded, Exclusive of Interest and Costs, $3000.00.

At the time that appellant filed its bill, appellee was asserting his right to collect money from it under an order and a judgment founded thereon, which purported, as has been pointed out, without the requirement of the occurrence of any future contingency of any character whatsoever, to give him the power to enforce payment by appellant to himself, from time to time, of sums of money totaling $3496.60. He was not claiming any sum under a separable, distinct part of the award, for it was indivisible; he could claim under it only as an entirety, as a single, indivisible, judicial determination of his rights against appellant and of appellant's corresponding obligation toward him—a determination subject to alteration or change only at the hands and by order of the Commission itself, which up to the day before trial of this action had not taken any such action.

The object of the appellant in this action was to be rendered secure in its property to the same ex-

tent that it stood menaced by the award and judgment. It sought to enjoin the collection, not only of the sums which had accrued on December 18, 1917, but of the entire amount awarded, namely, $3496.60.

Hence, the relief sought by appellant, had it been granted, *would have denied appellee the right to collect the entire amount,* including both that portion of it which had accrued when this suit was filed, and the future payments thereafter to accrue. It is the value to appellant of this relief which measures the value of the matter in dispute.

This court has said:

> "* * * the jurisdictional amount is to be tested by the value of the object to be gained by complainants * * *."
>
> *Glenwood, etc. Co. v. Mutual Light Co.,* 239 U. S. 121.

Appellant was insisting upon its right to remain secure in its property to the extent of $3496.60.

> "The relief sought is the protection of that right now and in the future, and the value of that protection is determinative of the jurisdiction."
>
> *Glenwood, etc. Co. v. Mutual Light Co.,* 239 U. S. 121.

Into the foregoing judicial expression there may be made appropriate interpolations, and it then becomes absolutely applicable to the instant case:

> "The relief sought [in this action] is the protection of that right [of the appellant to re-

main undisturbed in its property] now and in the future, and the value of that protection [namely, to declare void an award and judgment involving $3496.60] is determinative of the jurisdiction [of the court herein]."

For

"* * * where an injunction is prayed for, the amount in controversy is the value of the injunction itself, undoubtedly is the correct rule."

Bureau of National Literature v. Sells, 211 Fed. 379.

"By the matter in dispute is meant the subject of litigation, *the matter for which the suit is brought.*"

Lee v. Watson, 1 Wall. 337; 17 L. Ed. 557.

Injunctive Relief Looks to the Future and, Where Threatened Acts or Rights Asserted Involve $3000.00, the District Court Has Jurisdiction.

The award and judgment stood as a continuing threat against appellant's property. The law afforded appellee an opportunity to collect sums then due under it, as well as those thereafter accruing.

Appellant was not compelled to speculate upon appellee's intention to avail himself of this opportunity; nor to seek relief at the hands of a tribunal having no power to act; nor to stand by until its property had been seized at intervals until the total value reached $3000.00. If the rule were otherwise, then even though the award had been in the sum of $100,000, so long as it fell due in installments of less

than $3000.00 each, which were enforced as they fell due, the appellant would have been absolutely unable to seek protection at any time in the Federal courts, because, forsooth, appellee might at any moment have formed the intention of not enforcing subsequently accruing indemnity payments. It was sufficient to clothe the lower court with jurisdiction that a void award and judgment, involving on their face over $3400.00, no part of which had been paid, stood of record against it when action was filed.

Smith v. Whitney was a case in which an application was made for a writ restraining proceedings by court martial against an officer. Objection was made to the appellate jurisdiction of this court on the ground that the subject matter of the litigation was incapable of pecuniary estimation. The objection was overruled, the court saying:

> "The matter in dispute is whether the petitioner is subject to prosecution which may end in a sentence dismissing him from the service, and depriving him of a salary, as Paymaster General, and as Pay Inspector thereafter, which in less than two years would exceed the sum of $5000.00."
>
> *Smith v. Whitney,* 116 U. S. 167; 29 L. Ed. 601.

Where a complainant sought an injunction to restrain a series of threatened seizures of his goods by State officials under a statute alleged to be violative of the Federal law and where it appeared that the particular seizure complained of in the bill did

not involve goods of the value of the jurisdictional amount, the United States Supreme Court said:

> "Nor can it be reasonably claimed that the plaintiff must postpone his application to the Circuit Court, as a court of equity, until his property to an amount exceeding the value of $2000.00 has been actually seized and confiscated, and when a preventive remedy by injunction would be of no avail."
>
> *Scott v. Donald,* 165 U. S. 107; 41 L. Ed. 648.

The same rule is applied in

> *Hunt v. N. Y. Cotton Exchange,* 205 U. S. 322; 51 L. Ed. 821.

The principle of the foregoing cases is the same as that upon which it has uniformly been held by the United States Supreme Court, that jurisdiction exists where the right to levy and impose taxes was attacked on the ground that it was violative of Federal law, but in which the particular tax complained of involved less than the jurisdictional amount. The court has always held that the value of the thing in controversy, where the right to make future levies was called in question, as well as the validity of the particular tax, was not the amount of the tax, but was co-extensive with the amount of the tax and the right to levy, asserted by the defendant and sought to be enjoined by the complainant.

> *Berryman v. Board of Trustees,* 222 U. S. 334;
>
> *New Orleans v. Citizens Bank,* 167 U. S. 371;
>
> *Deposit Bank v. Frankfort,* 191 U. S. 499.

So here, appellant in filing its bill called into question the validity of the entire award and appellee's right to enforce, not only accrued payments, but all payments subsequently to accrue as well.

In

Chesapeake & Delaware Canal Co. v. Gring,
159 Fed. 662,

Gring sought an injunction against the enforcement of certain alleged onerous, oppressive and illegal regulations enforced by a canal company, in connection with the use of its water.

In overruling a plea to its jurisdiction, the court said:

> "We are of opinion that the demurrer to the jurisdiction was properly overruled, as the subject-matter in dispute was above the jurisdictional amount, and, although it might be that in no one year would the amount claimed to be illegally exacted amount to more than $2000, the injury to complainant was of the nature of a continuous trespass, the proper remedy for which would be by an injunction, which would avoid the necessity of bringing an indefinite number of suits in the future. The prevention of vexatious litigation and of a multiplicity of suits is a favorite ground for the exercise of the jurisdiction of equity."
>
> *Chesapeake & Delaware Canal Co. v. Gring,*
> 159 Fed. 662 at 665.

So, also, where a railroad company sought an injunction to restrain the prosecution of a series of actions to enforce small penalties for alleged overcharges of freight, it was held that the court had

jurisdiction because the right of maintaining scheduled rates was the thing in dispute and this right was worth more than the jurisdictional amount.

Texas & P. R. Co. v. Kuteman, 54 Fed. 547.

Where the relief sought was an injunction against the interference with water rates it was held it was not the difference between the rates contended for by the complainant and those insisted upon by the defendant, but the value of the right to fix rates which determined jurisdiction.

Board of Trade, etc. v. Cella Com. Co., 145 Fed. 28.

The value of the right to conduct business without being subjected to an onerous tax and not the amount of the tax itself determines the jurisdictional amount in actions for injunction against such tax.

Humes v. City of Ft. Smith, 93 Fed. 857;
The Mississippi & Missouri R. R. Co. v. Ward, 67 U. S. 485; 17 L. Ed. 311.

What measures the value of the thing—that is to say, the award and judgment—placed in controversy in this action? Obviously *it is the amount which the complainant stood ordered to pay to appellee under their terms at the time that the action was begun and which appellee had the legal power to collect, namely, the entire sum of $3496.60.*

Where, as in This Case, the Jurisdictional Amount Is Pleaded in Good Faith or the Determination of the Amount Involved Depends Upon Issues of Fact or Law, the Court Has Jurisdiction.

Where a complainant alleges in good faith that the value of the matter in dispute exceeds $3000.00, or the value of the matter in dispute cannot be ascertained without a determination of issues of fact or law, the court has jurisdiction *for all purposes.*

If it appears that the amount was overstated for the purpose of getting jurisdiction, or if it appears from the record as a matter of absolute certainty that the jurisdictional amount cannot possibly be involved, the court will refuse to entertain the action. These rules are well settled.

> "The matter in dispute is the amount sought to be recovered by the complainant. *When that is disputed, and the arguments for and against it must be heard and weighed and decided by the court, then the court having the right and the duty to hear and determine it has jurisdiction, without regard to the fact that, notwithstanding the claim in the bill, the ultimate recovery cannot equal the jurisdictional limit.* The fact that there is a valid defense to the action, apparent on the face of the bill, does not diminish the amount that is claimed, or deprive the court of jurisdiction. Schunk v. Moline Milburn & Stoddart Co., 147 U. S. 505, 13 Sup. Ct. 416, 37 L. Ed. 255. Wherever the court has the admitted power to decide the question, this is an admission that the court, to this extent, has jurisdiction. Railroad Co. v. Adams, 180 U. S. 35, 21 Sup. Ct. 251, 45 L. Ed. 412. What, then, is the matter in dispute? We must in-

quire what the complainant claims and what the defendant denies. If the complainant claims against the defendant more than $2000.00, exclusive of interest and costs, and this be denied by defendant, and the point must be decided by the court, then the matter in dispute—the amount in controversy—exceeds $2000.00, and the court has jurisdiction. 'The court cannot judicially take notice that by computation it may possibly be made out, as a matter of inference from the plaintiff's pleading, that the plaintiff's claim in reality is below the jurisdictional amount'. Scott v. Lunt's Adm'r., 6 Pet. 349, 8 L. Ed. 423. The Supreme Court of the United States have determined that it is the claim set up by the plaintiff which fixes the jurisdiction of the court; not a claim evidently fictitious, and alleged simply to create jurisdiction, but a claim made in good faith, upon grounds however fallacious or untenable. Schunk v. Moline Milburn & Stoddart Co., supra. Mr. Justice Blatchford, in Opton v. McLaughlin, 105 U. S. 644, 26 L. Ed. 1197, emphasized this doctrine, and held that, although upon the face of the plaintiff's pleading there appeared a perfect defense to the action, still the court had jurisdiction; that is to say, the right to hear and determine that fact. * * *

It may be—no doubt it will be—that an examination will show that the debt due to plaintiff has been very materially reduced below $2000.00. 'But we are not to regard the verdict or judgment as the rule for ascertaining the value of the matter in dispute between the parties. * * * To ascertain, then, the matter in dispute, we must recur to the foundation of the original controversy—to the matter in dispute when the action was instituted. The descriptive words of the law point emphatically to this criterion, and in common understanding the

thing demanded, not the thing found, constitutes the matter in dispute between the parties."

Interstate Building & Loan Ass'n. v. Edgefield Hotel Co., 109 Fed. 692-3-4.

The same rule is laid down in the following cases:

LeRoy v. Hartwick, 229 Fed. 857;

Brent v. Chas. H. Lilly Co., 202 Fed. 335;

Garrett v. Mallard, 238 Fed. 335;

Tennent-Stribling Shoe Co. v. Roper, 94 Fed. 739;

Schunk v. The Moline, Milburn & Stoddart Company, 147 U. S. 500; 37 L. Ed. 255;

Armstrong v. Walters, 223 Fed. 451.

The rule which appellant contends should have been observed, but which was violated by the District Court, is concisely and clearly stated as follows:

"The difficult question is as to the jurisdictional amount. * * * I take it that the rule is this: Whenever, by an inspection of the complaint—perhaps of the whole record—it appears that the amount claimed is within the jurisdictional limit, or that, being apparently beyond it, the statement is conclusive, or a fraud on the jurisdiction, the court must dismiss the cause. *But when it is necessary, in order to ascertain the amount involved in controversy, to consider the conflicting testimony, or to decide disputed questions of law, this necessity alone gives the court jurisdiction. The court, under such circumstances, must hear the case, and*

reach its conclusions judicially; in other words, it must take jurisdiction."

Stillwell-Bierce, etc. Co. v. Williamston Oil and Fertilizer Co., 80 Fed. 68.

This case falls squarely within the doctrine of the foregoing decisions:

1. Because the appellant in good faith pleaded the jurisdictional amount;

2. Because the record discloses that the value of the relief sought by the plaintiff exceeded the jurisdictional amount;

3. Because appellee pleaded in defense of this action an alleged recovery from his injuries prior to its commencement and his allegations presented an issue of fact which the lower court had to decide upon evidence presented at the trial and which it could not have passed upon without the reception of such evidence;

4. Because the legal effect upon the liability of the appellant of appellee's alleged recovery, in the absence of any official determination thereof, or action thereon prior to the commencement of this suit, was and is a disputed question of law.

"The court, under such circumstances, must hear the cause, and reach its conclusion judicially; in other words, must take jurisdiction."

Stillwell-Bierce, etc. Co. v. Williamston Oil and Fertilizer Co., 80 Fed. 68.

IV.

CONCLUSION.

The award and judgment were void because the Industrial Accident Commission had no jurisdiction of the subject-matter.

When this action was begun appellant stood menaced in its property by a judgment involving payment by it to appellee of $3496.60. The value to it of an injunction restraining enforcement of the judgment was in the same amount. Hence the jurisdictional amount was involved.

No circumstance occurring subsequently to the filing of the bill could affect or oust jurisdiction. Hence, the Commission's order terminating liability could not affect the question and was inadmissible in evidence.

Appellee's recovery prior to the commencement of the action is immaterial, because it did not alter or affect his *legal power* to deprive this appellant of property. That power could have been taken from him only by the Commission by an order filed in the Superior Court. But no such order was made until twenty months after the commencement of this action, nor does it appear that any copy thereof has ever (even now) been filed with the clerk.

The District Court had jurisdiction because the jurisdictional amount was pleaded in good faith, and determination of the value of the matter in dispute depended upon disputed issues of both law and of fact.

Therefore, it is most respectfully submitted that the decree of the District Court is erroneous; that it should be reversed, and that the cause should be remanded with instructions to enter a decree in favor of appellant as prayed in its bill.

Dated, San Francisco,
September 29, 1920.

ERNEST CLEWE,
FRANK W. AITKEN,
Solicitors for Appellant.